EXHIBIT P

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

vs.

AMERICAN AIRLINES GROUP INC. and JETBLUE AIRWAYS CORPORATION,

Defendants.

Civil Action No. 1:21-cv-11558-LTS

DEPOSITION OF NATHAN H. MILLER, Ph.D.

Washington, DC

August 17, 2022

Reported by: John L. Harmonson, RPR

Job No. 213777

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AFTERNOON SESSION

1:18 p.m.

THE VIDEOGRAPHER: We are back on the record at 1:18. 13:19

BY MR. WALL: 13:19

Q. All right. Let's pick up with sort of the basic question of why you're simulating that the NEA is like a merger. So let me begin and let's see if we can agree on a few things. 13:19

So you agree that technically, formalistically, the NEA is not a merger; right? 13:19

A. That's right. It's an agreement between JetBlue and American. 13:19

Q. It's a bilateral contract or set of contracts. 13:19

A. Okay. 13:19

Q. So American doesn't have any right to choose board members for JetBlue or vice versa; right? 13:20

A. Okay. 13:20

Q. I mean, is that consistent with your understanding? 13:20

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A. Yes, it is. 13:20
Q. Okay. The NEA is not going to lead to the elimination of the JetBlue brand; correct? 13:20 13:20
A. I haven't seen any evidence that it would. 13:20 13:20
Q. Okay. Nor the American brand; right? 13:20
A. Same for American. 13:20
Q. Okay. And you haven't seen any evidence that the NEA requires JetBlue to adopt or conform to American's so-called legacy or general network carrier business model, have you? 13:20 13:20 13:20 13:20
A. No, I don't think there is language that requires JetBlue to do that. 13:20 13:20
Q. There is no permanent transfer of assets through the NEA, is there? 13:20 13:20
A. No. 13:20
Q. And there is no pricing coordination in the NEA, is there? 13:20 13:20
A. I do not believe the NEA provides a structure for JetBlue and American to talk about the prices that they're setting. 13:20 13:21 13:21
Q. There is no aggregate capacity coordination of the kind that Dr. Town talks about in his report in connection with capacity 13:21 13:21 13:21

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discipline, is there? 13:21

A. The NEA is a bilateral contract between American and JetBlue, and I believe Professor Town when he talks about capacity coordination, what you're referring to is something more industry-wide, and the contract is going to cover coordination of capacity between JetBlue and American specifically. 13:21

Q. But it doesn't -- they do not discuss or coordinate the setting of their industry-wide capacity; the size of their fleets, for example, those sorts of things? 13:21

A. Certainly I think that the results would have bearing on that. But I believe what the agreement allows for is coordination on capacity in routes that connect to an NEA airport. 13:22

Q. Okay. So then go ahead and -- in light of all of that, go ahead and just explain for the record why it is that you believe that the competitive effects of the NEA can be fairly addressed through a merger simulation. 13:22

A. Sure. First of all, for clarification, the model that I'm using 13:22

characterizes the incentives that are created by the NEA specifically, not those of a generic merger. So I prefer to call it just the simulation model. 13:23 13:23 13:23 13:23

The model incorporates that when the NEA is in place and in effect on particular routes, that JetBlue benefits if American's revenue increase, and American benefits if JetBlue revenue increase. And that creates incentives, according to economic theory, to raise price in a way that's mutually beneficial for JetBlue and American along the particular markets that I've studied. And that's laid out in Section 4 of the report. 13:23 13:23 13:23 13:23 13:23 13:23 13:23 13:23 13:23 13:24

Of course the NEA is more broad than only the sharing of revenue. It also creates an avenue for capacity coordination. And I've considered the arguments that were put forth by the defendants' economist in the course of the investigation, and also put forth by Dr. Israel in his expert report that the NEA would provide unilateral incentives for each party to expand output. 13:24 13:24 13:24 13:24 13:24 13:24 13:24 13:24 13:24

And I've pointed out both in my report 13:24

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and in my initial report, reply report, that it would be inappropriate to consider those unilateral incentives in a context in which JetBlue and American are coordinating.

In fact, if they were to act on the unilateral incentives of the MGIA to expand capacity instead of coordinating capacity with each other, the effect would be that each party would subsidize unprofitable expansion of the other and thereby exploit the other partner. Joint profits would go down.

And therefore, it does not seem reasonable or likely that decisions taken in the midst of capacity coordination would undermine or alter the effects of revenue sharing on pricing incentives that the agreement creates.

And that is the way that my model captures the incentives that are created by the NEA.

Q. Okay. Thank you.

So in Section 4.1 of your initial report, around page 21, you lay out your argument that incentive alignment, not a change in coordination or control, is what makes a

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that are most meaningful, I believe. 14:03

Q. In the case of nonstop overlap routes that touch the NEA airports, how, if at all, does your simulation differ from a generic merger simulation? 14:03

A. Those routes also can feature connect traffic from American or JetBlue, or possibly both. And in those settings, the effects of the competing nonstop, the prices that are put on the competing nonstop route -- or on the connect route are only partially internalized, which is consistent with the terms of the NEA. 14:04

Q. Okay. So if I understand it, what you're saying is, say for example, San Francisco to New York, that some amount of the passengers are going to go New York, Chicago, to San Francisco. In a generic merger simulation, that would be fully internalized. But in this simulation, that particular feature of the connect traffic that competes with the nonstop traffic is subject to partial internalization? 14:04

A. That's correct. 14:04

Q. Okay. Anything else besides that? 14:04

A. As I said, aside from the, you know, 14:04

trying to constrain it only to NEA markets, I think those are the big two that came to mind. But I'll refer you to the report because there might be nuances that come up, you know, looking at different markets. 14:04 14:04 14:04 14:04 14:05

Q. Okay. So focusing back on the importance of revenue sharing, is it appropriate to analyze the effects of the NEA on routes in which the parties do not share revenues as a merger? Let me say that again. I kind of botched it. 14:05 14:05 14:05 14:05 14:05 14:05

Is it appropriate to predict the competitor effects of the NEA on nonstop overlap routes on which the parties do not share revenue? 14:05 14:05 14:05

MR. DeRITA: Objection to form. 14:05

THE WITNESS: It can be appropriate. And I believe that I've done so in my report in the sense that I've tried to get a sense for how outcomes might change in other markets if the competitive effects of the NEA extend beyond what is explicitly covered in the NEA agreement. 14:06 14:06 14:06 14:06 14:06 14:06

BY MR. WALL: 14:06

Q. I'm sorry. I'm not talking about -- my question was limited to the nonstop overlap 14:06 14:06

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routes. There's a number of carve-out routes in which there's no revenue sharing; right? 14:06 14:06

A. I thought you were talking about, for example, maybe Miami to LA. 14:06 14:06

Q. No, that's not what I'm talking about. I'm talking like, for example, Boston to Charlotte, Boston to Philadelphia, Boston to Phoenix. 14:06 14:06 14:06 14:06

A. Okay. With that in mind, could you ask the question? I'll try to get through it. 14:06 14:06

Q. Yeah. 14:06

Can you explain to me how you can justify predicting the competitive effects of the NEA as if it were a merger with respect to those nonstop overlap routes that are carved out of revenue sharing? 14:06 14:06 14:07 14:07 14:07

A. I am -- I have doubts as to the effectiveness of the proposed carve-outs. And as a result of those doubts, I elected to provide results summarizing the likely competitive effects both including and excluding the six carve-out routes. 14:07 14:07 14:07 14:07 14:07 14:07

Q. What is the basis of your doubts about the effectiveness of revenue sharing? 14:07 14:07

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A. First, my understanding is that American and JetBlue can modify the NEA as they wish, and so a carve-out that exists now may not exist in the future. 14:07 14:08 14:08 14:08

Second, the NEA capacity coordination that I think matters quite a deal here, it may be hard to separate out flight decisions along one particular route from flight decisions at airports like New York or like Boston where the route connects. And in that sense, it could well be that the carve-out routes are intertwined with NEA decisions even though they are carved out. 14:08 14:08 14:08 14:08 14:08 14:08 14:08 14:08

Furthermore, there is some prospect that the NEA creates a willingness of American and JetBlue to soften price competition between them in these markets where there is not a lot of other competitors in a way that would harm consumers. 14:09 14:09 14:09 14:09 14:09 14:09

And putting those together, I determined that it would be appropriate to report results that both include and exclude the carve-out routes. 14:09 14:09 14:09 14:09

Q. Do you have an opinion, however, as to whether the harms that you quantify with respect 14:09 14:09

to the carve-out routes are likely to materialize? 14:09 14:09

A. I have concerns about the effectiveness of the carve-outs in the contracts in ameliorating harm. And I'll note that if there is a way for the parties to soften price competition along those routes it would be profitable to do so. 14:09 14:09 14:10 14:10 14:10 14:10

And so I do view it as reasonably likely that harm would occur along those routes. 14:10 14:10

Q. Okay. I know you're sort of new to this game. But, sir, do you understand that in litigation an expert is allowed only to testify to opinions that he or she has reached as a result of some analysis consistent with their expertise? 14:10 14:10 14:10 14:10 14:10 14:10

MR. DeRITA: Objection to form. 14:10

THE WITNESS: Yes. 14:10

BY MR. WALL: 14:10

Q. Okay. And have you or have you not reached an opinion as to whether the harms on the carve-out routes are what you quantify them to be? 14:10 14:10 14:10 14:10

A. I think that there is likely to be 14:10

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substantial harm on the carve-out routes due to concerns that I have about the carve-outs. 14:11 14:11

Q. How likely? 14:11

A. Reasonably likely. 14:11

Q. You said that. That's why I followed up. How likely is reasonably likely? 14:11 14:11

A. I haven't quantified a particular percentage if that's what you're asking for. 14:11 14:11

Q. More or less likely than the harm on the routes that are actually subject to revenue sharing? 14:11 14:11 14:11

A. Oh, okay. I do observe that the carve-outs are intended to fix competitive problems. They may be successful at doing so. I have doubts. And so, you know, if you had to rank the likelihoods, I would say, you know, at the top would be the ones that are not subject to the carve-outs, and below that would be the ones that are subject to the carve-outs. 14:11 14:11 14:11 14:11 14:11 14:11 14:12 14:12

Q. Do you have any basis for believing that, notwithstanding the carve-outs, American and JetBlue are sharing revenues on the carve-out routes? 14:12 14:12 14:12 14:12

A. No, I do not believe that they share 14:12

revenue on the carve-out routes. 14:12

Q. So right now, American has no stake in JetBlue's revenues on those carve-out routes and JetBlue has no stake in American's revenues on those carve-out routes; correct? 14:12

A. There is no direct financial stake. 14:12

Q. So if they are thinking of adjusting their pricing based upon the internalization of diversion from one to the other, there is no point to it right now because they don't internalize the diversion, do they? 14:12

A. No. That's correct. There would not be internalization about diversion so long as the routes remain carved out. 14:13

Q. You are aware, aren't you, that MGIA is structured similarly to the revenue-sharing provisions in the Atlantic joint business? 14:13

A. I've read a representation that that's the case but I have not studied the other agreements. 14:13

Q. That was going to be my question to you. Have you done anything to study the incentive effects or behavioral effects of revenue sharing in the Atlantic joint business or 14:13

C E R T I F I C A T E

DISTRICT OF COLUMBIA

I, JOHN L. HARMONSON, a Notary Public within and for the District of Columbia, do hereby certify that NATHAN H. MILLER, Ph.D., the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

That before completion of the proceedings, review and signature of the transcript was requested.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of August, 2022.

John L Harmonson

JOHN L. HARMONSON, RPR

My commission expires: 04/14/26